



DECISION ON ADMISSIBILITY

Case no. CH/02/11174

Petar TODORVIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 January 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Article VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. This case concerns the applicant's complaints that he was subject to unlawful detention and maltreatment, and as a result, he suffers from health problems.

II. STATEMENT OF FACTS

2. On 7 February 1996, the then Higher Court in Sarajevo (the "Higher Court") issued a procedural decision ordering the detention of the applicant until 7 March 1996. On 1 March 1996, his detention was extended by the procedural decision of the same court until 4 May 1996, and subsequent decisions ordered the extension of his detention until 4 August 1996. On 10 February 1996, the Higher Court issued a procedural decision opening an investigation into the applicant on reasonable suspicion of committing acts of genocide.

3. On 17 May 1996, the Higher Court issued a procedural decision terminating the investigation against the applicant and ordering his release from detention, upon the *ex officio* decision by the Presidency of Bosnia and Herzegovina against all those charged with alleged criminal offences committed in the course of their duty as members of the armed forces of the Republika Srpska.

III. PROCEEDINGS BEFORE THE CHAMBER AND COMPLAINTS

4. The applicant wrote to the Chamber on 3 June 2002 complaining of a violation of his human rights under the European Convention on Human Rights (the "Convention"). On 5 June 2002, the Chamber wrote to the applicant informing him of the necessity to complete the standard application form, which was enclosed. The application was introduced on 17 June 2002.

5. The applicant complains that he was detained unlawfully for a period of four months and that as a result of his detention he became seriously ill. He also claims that he was maltreated and forced to sign false statements against his will.

6. The applicant claims that the respondent Parties violated his rights as guaranteed under Articles 3, 5, 6 and 8 of the Convention. Additionally, the applicant requests pecuniary compensation in the amount of 8,000 KM and non-pecuniary compensation in the amount of 70,000 KM.

7. The Chamber wrote to the applicant on 22 July 2002 requesting full particulars concerning his medical condition, including medical reports and details of any periods of hospitalisation. In addition, the Chamber requested the applicant to submit full details concerning his request for compensation.

8. On 8 August 2002, the applicant submitted to the Chamber records from his employer confirming that he was unavailable for work from 20 January 1996 to 1 June 1996, and on sick leave from 1 June 1996 until 30 June 1996. The applicant also submitted medical findings for the period of 1996 to 2002, detailing that he suffered from bronchitis. Furthermore, on 1 August 2002, a medical specialist prescribed him psychotherapy due to his suffering from insomnia and heart pounding.

IV. OPINION OF THE CHAMBER

9. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept... In so doing, the Chamber shall take into account the following criteria: (a) ... that the application has been filed with the Commission within six months from such date on which the final decision was taken."

10. The Chamber notes that the applicant originally applied to the Chamber on 3 June 2002 and his application was lodged on 17 June 2002. It finds that the final decision for the purposes of Article VIII(2)(a) of the Agreement, was issued on 17 May 1996, when he was released from

detention by the order of the Presidency of Bosnia and Herzegovina (see case no. CH/98/896, *Mirko Čvokić*, decision on admissibility and merits of 10 May 2000, paragraphs 42-43, Decisions January–June 2000). The Chamber further notes that the applicant filed the application with the Chamber more than six years after he had been released from detention, that is, after the expiry of the above-mentioned six-month period. It will therefore consider whether there are any special circumstances which could justify the failure to apply in time.

11. In his application to the Chamber, the applicant stated that his application was filed late due to his illness and because he was not aware of the existence of the Chamber until the time of submitting his application.

12. The Chamber recalls that it in case no. CH/98/1021, *Nevres Agić* (decision on admissibility of 5 October 1999, paragraph 14, Decisions July–December 1999), it found that the applicant's lack of knowledge of the Chamber's existence did not amount to a justifiable reason for his failure to comply with the six-month time limit. Furthermore, in case no. CH/99/1433, *Hurem Smajić* (decision on admissibility of 4 November 1999, paragraphs 12-19, Decisions July–December 1999), the applicant complained of being poorly informed about the law. The Chamber concluded that for the period subsequent to his release "...there were no significant hindrances to the applicant's ability to become better informed regarding the Agreement".

13. With respect to the applicant's complaint that his ill-health prevented him from submitting his application within the six-month time-limit, the Chamber recalls that the applicant submitted to the Chamber medical records pertaining to his condition as well as the periods of absence from work. In this regard, the Chamber is unable to see from the submitted documents that the applicant was prevented from applying to the Chamber for a period of more than 6 years.

14. The Chamber recalls under Article VIII(2)(a) of the Agreement, it has previously considered that it enjoys a certain margin of appreciation depending on the circumstances of the particular case (see e.g., case nos. CH/98/904, CH/98/1061 and CH/99/2238, *Durmiš, Kovač and Durmiš*, decision on admissibility of 12 May 2000, paragraphs 21-24, Decisions January–July 2000). However, the Chamber finds that there can be no reason to justify a delay of more than 6 years, and in any event, the applicant has failed to provide any adequate explanation for his failure to comply with the six-month time-limit.

15. Accordingly the Chamber decides to declare the application inadmissible for the failure to comply with the time limit set out in Article VIII(2)(a) of the Agreement.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel